Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

EDMUND OROK EDEM,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

EDMUND OROK EDEM
97 Broad Street
Staten Island, New York 10304
718 815 2725

QUESTIONS PRESENTED

(i) Whether the *Rooker-Feldman* Doctrine applies when there is a concurrent hearing pending in a state court, which the state court has deliberately refused to attend to?

(ii) Whether there is any other remedy known in law apart from the reissuance of a corrected copy of a document when the initial one sent to the petitioner had been accepted to be falsified and thus a nullity?

(iii) Whether the undisputed facts of conspiracy and forgery which have been accepted by the defendants as true, does not confirm the violation of federal laws and international treaties of which the United States is a signatory?

(iv) Whether the *Rooker-Feldman* Doctrine bars a federal court from nullifying a state court judgment when that judgment is unconstitutional and the state court has been given more than one opportunity to nullify the judgment?

(v) Whether the *Rooker-Feldman* Doctrine bars the procedural challenge of entering two orders on the same day negating the statutorily mandated 30-35 days hiatus, and if there is any evidence submitted by the defendants that this issue was ever litigated in any prior proceedings?

(vi) Whether any evidence existed on the record to establish the essential elements of a full and fair opportunity by the petitioner to litigate all the constitutional due process violations and international law issues raised in state's highest court and if that could validate a judgment of the state court of first instance which is a nullity?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgments is the subject of this petition is as follows:

(i) United States of America

(ii) Eliot Spitzer

(iii) Alberto Gonzales

(iv) Stewart Weinstein

(v) Robert Ratanski

(vi) Paula Hepner

(vii) Mary Clarke

(viii) Elizabeth Shamahs

(ix) Mary Regenbotham

(x) Michael Belohlavek

(xi) New York State Commission for Judicial Conduct

(xii) John and Jane Does

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The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished. The opinion of the State of New York Court of Appeals appears at Appendix B.

JURISDICTION

The date on which the United States Court of Appeals decided my case was November 8, 2006, a timely petition for en banc rehearing was denied by the United States Court of Appeals on January 31, 2007, a copy of the order denying en banc rehearing is at Appendix A. The jurisdiction of this Court is invoked under International Law: International Covenant on Civil and Political Rights, 1966 Articles (ICCPR), 28 U.S.C. § 1254(1), 28 U.S.C. § 1257, 28 U.S.C. § 1346(B)(1), 1350 Alien Tort Act, 28 U.S.C. § 1983, 1985, 1986, 1988, 28 U.S.C. § 1738, 6th Amendment, 14th Amendment.

INTERNATIONAL TREATIES, CONSTITUTIONAL AND STATUTORY LAWS INVOLVED

6th Amendment

The accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

14th Amendment

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1346(B)(1) 1350 Alien Tort Act

"The district court shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

International Covenant on Civil and Political Rights, 1966 Articles (ICCPR) (1966)

Article 2

Each State Party to the present Covenant undertakes:

(a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 14

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligation in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

- The right to a fair hearing
- The right of access to a court or tribunal
- The right to a reasoned judgment
- The right to full review
- The right of an appeal
- The availability of a judgment
- Transcripts of the trial
- The Right to Compensation in the Event of a Miscarriage of Justice

Article 10 of the Universal Declaration

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Family Court Act 1113

All such orders shall contain the following statement in conspicuous print: Pursuant to section 1113 of the family court act, an appeal under this article must be taken within thirty days of receipt of the order to petitioner by the clerk of the court, or thirty days after service by a party or law guardian upon the petitioner, whichever is earliest.

STATEMENT OF THE CASE

The petitioner, a Nigerian citizen, brings this case to this honorable Court to exhaust all remedies available in the United States, before bringing suit in his home country against the United States, for violating his due process right to a fair hearing[1] through enforcing judgments based on orders that are null and void. The said orders were entered on August 15, 2000, by the family court of the State of New York.[2]

The said court held on to a copy of the order of filiation for 16 months before mailing a falsified copy to the petitioner, after series of demands by him and his attorney, App. 16, which did not contain the mandatory legal notice as stated in the enabling statute, thus rendering it a nullity. Also, the withholding of the said document for 16 months and the entry of a subsequent order of support on the same day August 15, 2000, violated the statutory requirement of a 30-35 day hiatus, for an appeal (objection) to be made (to

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[1] The right to a fair hearing lies at the heart of the concept of a fair trial. Everyone is entitled to a fair hearing, Article 10 of the Universal Declaration, Article 14(1) of the ICCPR, Article XXVI of the American Declaration, Article 8 of the American Convention.

[2] Under public international law, the action of a local government is regarded as that of the sovereign state.

the same court of first instance) before the entry of a subsequent order of support, App. 13, thus denying the petitioner a timely notice and an opportunity to be heard contrary to international law.

The petitioner then filed a motion for this order to be vacated on the basis that it was a nullity on April 24, 2005. The family court set a date for hearing but refused to attend to the case, the presiding magistrate running off to hide with the case file, App. 7. The petitioner then brought this suit to the federal court claiming that the state court denied him access to her court contrary to international law.

The lower federal court claimed lack of jurisdiction based on the *Rooker-Feldman* Doctrine due to part of a prejudicial intermediate state court's judgment which dealt with different issues altogether, and notwithstanding the existence of a state highest court's final judgment, which did not give the petitioner a full and fair opportunity to litigate all the issues.[3] The United States Court of Appeals relying on previous pro se suits filed by the petitioner regurgitated only the state issues wrongly raised in those cases and totally obscured the federal, constitutional, criminal, and international law issues raised, and the fact that this new case started because the state court is refusing the petitioner access to have his claims looked at, and misled itself in law and facts holding that: "the petitioner had a 'full and fair opportunity to litigate all the issues' in the state proceedings. Therefore his claims are extrinsically intertwined with state court judgments and thus barred by the *Rooker-Feldman* Doctrine."[4]

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[3] The right to a fair trial is broader than the sum of the individual guarantees, and depends on the entire conduct of the trial. [See: Human Rights Committee General Comment 13, para. 5; Advisory Opinion of the Inter-American Court of Human Rights, OC-11/90, *Exceptions to the Exhaustion of Domestic Remedies,* 10 August 1990, Annual Report of the Inter-American Court, 1990, OAS/Ser L./V/III23 doc.12 rev. 1991, at 44, para. 24].

[4] Justice Kayode Eso held in *State v. Owonto* (1983) ISCNCR 142, 160, that "The Court is more interested in substance than in form. Justice can only be done if the substance of the matter is examined.

(Continued on following page)

REASONS FOR GRANTING THE WRIT

The judgment of the courts below is at variance with international law. It is in conflict with several United States Supreme Court judgments. It is inconsistent with its own previous holdings in similar cases. Also, it is in conflict with the position of other circuit courts and against the grain of natural justice.

It is further submitted that petitioner is not challenging the rightness or wrongness of the judicial decision pertaining to filiation, but the procedural actions that took place after. The entry of the said order, thus the challenge is aimed at the entry of the order of support on the same day, and any other judgment entered in this case thereafter, that has the order of filiation as its foundational basis. The petitioner further submits that because a falsified copy of the order of filiation was mailed to him 16 months after entry, that action violated his constitutional rights to a timely notice. The non-inclusion of a mandatory notice in a copy of the order nullified any subsequent actions that have taken place in this case till date. My complaint thus is about administrative procedures that took place after the entry of an order of filiation.

The cardinal question then is whether the state courts have replaced the copy of the order of filiation sent to the petitioner on November 8, 2001. If not, does that not render every proceeding theretofore held in this case a nullity and does that not debunk the conclusion reached by the lower federal courts?

The petitioner further submits that all actions or decisions taken after the entry of the order of filiation on August 15, 2000, beginning from the lowly court of Magistrate Clarke, to the highest court of the late Justice Rehnquist is null and void, even if any court in the United States gave the petitioner caviar, Cristal champagne, cigar and a fair trial during its deliberations, after August 15, 2000, their actions will still

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Reliance in technicalities leads to injustice." "We think a fair hearing involves a fair trial and a fair trial consists of the whole hearing. We therefore see no difference between the two."

remain a nullity. The argument of the court below of a full and fair opportunity to litigate the issues in the state court is thus an academic exercise, because the copy of the order of filiation sent to the petitioner is incurably bad and can only be salvaged by the issuance of a new corrected copy.[5]

The allegation is thus of conspiracy and forgery against United States judicial officers which the institutional officers have refused to investigate and prosecute. The United States judiciary cannot build something on nothing and expect it to stand.

The decision of the court below is at variance with the Supreme Court in *Brown v. Allen*, 344 U.S. 443 (1953), *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 125 S. Ct. 1517, 1527 (2005), *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985), *Townsend v. Sain*, 372 U.S. 293 (1963), *Murray v. Carrier*, 477 U.S. 478, 485 (1986), *Twinning v. New Jersey*, 211 U.S. 78, 119 (1908), and its own holdings in *Hoblock v. Albany Board of Elections, Filartiga v. Pena-Irala*, 630 F.2d 876 (2nd Cir. 1980), *Jimenez v. Walker*, 03-2980 (2nd Cir. 2005). The court below is also in conflict with the 6th, 7th and 8th Circuits' position on a "full and fair opportunity to litigate". *Pierson v. O'Leary*, 959 F.2d 1385, 1391 (7th Cir. 1992), *Machacek v. Hofbauer*, 213 F.3d 947 (6th Cir. 2000), and *Willett v. Lockhart*, 37 F.3d 1265 (8th Cir. 1994).

A. There is a concurrent state and federal litigation in existence and thus *Rooker-Feldman* cannot be triggered.

On April 24, 2005, the petitioner filed the motion embedded below in the state family court, because a federal district judge had earlier ruled: "These claims should have been raised in state court, either in the Family Court or on appeal." (Dearie, J. (Eastern District of New York)). It is because the state family

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[5] A null and void order binds none and is incapable of giving rise to any right or obligation under any circumstances. No matter how well conducted a trial is, once it violates the fundamental right of the provision of the Constitution, it is a nullity.

court refused the petitioner access to her court that propelled the petitioner to return to the federal court.[6] Thus, there is a parallel state and federal litigation in progress, the fact that there were erroneous judgments made previously by any court in the United States, does not deprive the petitioner the right to have a judgment which is a nullity nullified as res judicata does not apply when a judgment is a nullity; and when it concerns the absence of a notice and hearing.

This present case started because the state family court has refused to deal with the motion embedded below. The courts below have therefore misled themselves by claiming that a full and fair opportunity to litigate all the issues had been granted the petitioner. Even if they had, which the petitioner is not conceding, was a new copy of the order of filiation mailed to the petitioner? No. The question that needs answering is, is there any other remedy known in law, when a document has been found to be legally defective, apart from the withdrawal of the said document and provision of a corrected one, with the attendant rights that would have accrued if it was properly done in the first place? The court below is wrong to insist that it does not have the power to declare a state action unconstitutional and a nullity. The motion filed recently in the state family court reads:

(a) FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of a Paternity Proceeding

Pamela Ise Smith,	Petitioner,
-against-	P/2539/00
	File No. 47029
Edmund Orok Edem	Respondent.

(b) MOTION TO VACATE JUDGMENT

The respondent Edmund Orok Edem, hereby moves this Court upon the accompanying and duly sworn affidavit for

[6] Denial of access to courts is against the tenets of international law, and the federal courts are responsible for violations of laws and treaties of which the United States is a signatory.

the vacation of an Order of Support judgment entered by this Court on the basis of the order or judgment being unconstitutional and a nullity, and therefore void.

(c) PLEASE TAKE NOTICE that this motion would be heard on May 9, 2005 or as soon as counsel can be heard in the Family Court of Kings County, Part 23, at 283 Adams Street, Brooklyn, New York 11201.

(d) AFFIDAVIT

(i) On August 15, 2000, this court entered an Order of Filiation and an Order of Support, contrary to the specific wordings of the Family Court Act (FCA) 1113 and the legislative intent of that Act. This egregious and odious action denied the respondent the right of appeal and breached his universally guaranteed right of fair hearing. This action is also contrary to the United Nations Declaration of Human Rights #s 10 and 17, and the 14th Amendment of the United States Constitution. It is also on all fours with existing case law. *Logan v. Zimmerman Brush Co.,* 455 U.S. 422 (1982).

(ii) The Family Court Act is a mandatory statute. It states, "All such orders *shall* contain the following statement in conspicuous print. "Pursuant to section 1113 of the family court act, an appeal must be taken within thirty days of receipt of this order." An order of filiation was sent to the respondent 16 months after and it did not contain the above caption. (Compare App. 8 & 11).

(iii) A mandatory statute requires and not merely permits a course of action. They are characterized by such directives as "shall" and not "may." It is trite that the omission of a 'mandatory' provision in the Order of filiation sent to the respondent renders the whole proceedings to which it relates null and void.

(iv) The order of filiation is a pre-deprivation notice. Failure to send it to the respondent on time denied him of a notice and hearing. It is on record that this pre-deprivation notice was sent to the

respondent 16 months after deprivation had taken place. The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision-making when it acts to deprive a person of his possessions. *Fuentes v. Shevin*, 407, US 67, 80-81 (1972).

(v) International law (respondent is a foreigner) and western civilization has held that due notice and a reasonable opportunity to present one's claim or defense are the two fundamental conditions almost universal in all systems of law. *Twinning v. New Jersey*, 211 U.S. 78, 119 (1908).

(vi) It is settled that when a tribunal or court of law being fully aware of the law of its own knowledge or brought to its attention in the course of proceedings and which provisions are in no way ambiguous, still decides to go outside those provisions, such an action can only best be described as a coup against the law and should be condemned.

(vii) From the foregoing, my fundamental liberty right of fair hearing has been breached by this court and its decision and order and any other future decisions entered by this court is a nullity. A decision or order of judgment of a court which is a nullity can be set aside by the judge who made the order or a judge of the same court. *A fortiori*, a person whose interest is affected by such a decision can come to court without any further assurance of ado to have it set aside *ex debicto justiciae* by the same court, through a judicial pronouncement without the necessity of an appeal. Denning, M. R., in the case of *McFoy v. U.A.C., Ltd.* (1961) 3 ALL ER 1169.

(viii) Failure to set aside or vacate this null and void judgment reinforces the argument that the State and hence the United States of America is extorting money from the respondent who is a foreigner under color of official light.

(ix) This court, her officers and all agents of the State are hereby put on notice of the violation of the civil and constitutional rights of the respondent.

(x) WHEREFORE, respondent prays that this court grants his request and refund all his money including interests and expenses and any other costs that the court might deem fit and proper.

Dated this day of April 8, 2005

Respectfully

Sgd

Edmund Orok Edem
97 Broad Street, Staten Island, New York 10304

(xi) Enclosures

i. Fraudulent copy of order of filiation sent by this court to the respondent. App. 8

ii. Correct copy of affidavit with the mandatory requirement. App. 11

iii. Copy of Family Court notification of July 25, 2005 court hearing. App. 7

There is thus a concurrent ongoing case pending in the state family court. Was a full and fair opportunity to litigate these issues raised above, accorded the petitioner?

It has been submitted before the United States judiciary that the copy of the order of filiation is incurably bad. Thus, there is only one remedy, and that is the nullification of the order of support which is based on the order of filiation. *The question which the United States judiciary has refused to apply its mind to, is that, the nullification does not in any way end the petitioner's obligations, if any. What it would do, is recognize the inchoate nature of this case, whereby the case would revert to the status it was on August 15, 2000.* Then and there, the appropriate due process denied the petitioner would be accorded him and the case would continue according and under the rule of law.

The 14th Amendment prohibits state action of a particular character. It nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities . . . or which injures them in

life, liberty, or property without due process of law. It provides modes of redress against the operation of state laws, and the action of state officers, executive or judicial. *Civil Rights Cases,* 109 U.S. 3 (1883). The action of withholding a court document for 16 months, and mailing of a falsified copy is unconstitutional and criminal, and there is no where in any record of any court of the United States where this particular issue has been raised. The only deceitful action is an omnibus statement of intent to review all issues and then silence. Has any court in the United States made a categorical statement that it has examined the document in question and it meets the statutory requirement as envisaged by FCA 1113 and the 14th Amendment of the United States Constitution? I ask that the state and federal authorities provide proof where such a question and answer was raised throughout the course of this litigation. For record purposes, the petitioner has approached the state intermediate court on six occasions, the state highest court on two occasions, the federal court on four occasions and this is the second visit to the United States Supreme Court. The petitioner went back to the family court on April 24, 2005 as shown above and access was denied. It is against the grain of natural justice for a federal court to refuse to correct the wrongs meted out to the petitioner. Whose responsibility is it to protect the violation of the United States Constitution and International Treaties of which the United States is a signatory?

B. The court below ignored international law treaties and the Alien Tort Act, while making its decisions.

It is trite that the inherent jurisdiction of the federal courts of law entails the power of the courts to act where the interest of justice requires it, even though no express provision confers jurisdiction to so act. In fact, it is the reservoir of courts' powers. In the event of an express provision occasioning injustice, the courts will invoke their inherent powers to avert it. The court below was wrong in holding that subject matter does not lie as the Alien Tort

Act, 28 U.S.C. § 1346(B)(i); 1350;[7] states very clearly that "the district court shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." As pointed out above, International Law and western civilization has held that due notice and a reasonable opportunity to be heard are the two conditions almost universal in all systems of law. *Twinning v. New Jersey*, 211 U.S. 78, 119 (1908). These two conditions were denied the petitioner by the defendants.

In *Johnson v. Eisentrager,* 339 U.S. 763 (1950), the Supreme Court held that the rationale for interpreting domestic law in harmony with international law loses none of its force, when a fundamental human right is involved. The petitioner submits that the denial of a right of appeal (objection in the family court) by the state involves a denial of a fundamental liberty right, and the *Rooker-Feldman* Doctrine does not even apply when the litigant had brought up the issue in a state court and failed to get redress. Even though, the state intermediate court made a statement of intent claiming to bring up those issues for review, they were not actually done, and the court below knowingly cites just that part of the judgment stating that it would be done and omits the result of the action.

International human rights law – International Covenant on Civil and Political Rights, 1966 Articles (ICCPR) and the Universal Declaration of Human Rights: requires access to courts or tribunal. The actions of the state have denied the petitioner this right as the state has denied him access to her courts, by refusing to hear his motion. If the state court had attended to the issue of a falsified document, there would have been no need for a filing of a motion again to deal with the same issue. American Statesmen have described this right as a feature that distinguishes civilized democracy from tyranny and

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[7] The court below omitted these statutory provisions as one of my grounds for invoking jurisdiction of the federal courts even though my complaint does mention such.

totalitarianism. The issue of jurisdiction has also been thrashed out by the court below in *Filartiga v. Pena-Irala,* 630 F.2d 876 (2nd Cir. 1980), in which that court was of the opinion that the Alien Tort Act permits federal courts to entertain claims brought for the violation of the law of nations.

International law demands that court documents including orders must be promptly sent to litigants. It demands a hearing; it demands a decision which could be appealed against. It asks that the reason behind a decision be so stated. There is nowhere in the state's final court judgment where these could be gleaned. The lower court has thus erred and is only trying to protect fellow judicial officers who violated the rights of the petitioner.

C. The court below ignored the Supreme Court's decision on *Exxon Mobil Corp. v. SABIC Ind.*, *Caldwell v. Mississippi*, *Harris v. Reed*, *Coleman v. Thompson*, and *Brown v. Allen*.

The court below went against its own clear understanding of the guidance granted by the Supreme Court in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 125 S. Ct. 1517, 1527 (2005), which it stated quite succinctly in *Hoblock v. Albany Board of Elections,* 422 F.3d 77, 83 (2nd Cir. 2005), the court below held that, the

> "Supreme Court does, however, give some negative guidance as to what cases are not captured by the requirements . . . , albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principle of exclusion."

From the above my "independent claim" that the order of filiation sent to me on November 8, 2001 is a forgery and does not meet statutory requirements, which states quite explicitly that the following wordings shall be *conspicuously inserted* is actually missing. FCA 1113 *supra.* (Compare App. 8 & 11). Since all the attempts to have a new and corrected copy sent to me by the state has

failed, my approach to a federal court cannot be barred by the *Rooker-Feldman*, because as early stated there is only one remedy known to law in dealing with a document that is statutorily incompetent, the re-issuance of a new one. The State of New York has not issued a corrected copy of the said order to me as at 6 years after the fraud was pointed out to them and has denied me access to her courts to litigate the issue.

Thus, a *collateral attack* has been launched against state actions. This is an independent claim that is outside the "compass" of *Rooker-Feldman*, and state law FCA 1113, determines the outcome even if they involve identical subject matter and parties as previous state court suits. These accusations have substance.

What the state intermediate court did which the courts below accepted was a promise to review the issues brought up on appeal, which they failed to do, thus the issues are still preserved as no judgment on the merit was entered on all the issues raised. The Supreme Court in *Harris v. Reed*, 489 U.S. 255, 260 (1989) and *Coleman v. Thompson*, 501 U.S. 722, 737 (1991), and the court below in *Jimenez v. Walker,* 03-2980, decided on July 31, 2006 have laid out the criteria for **judgment on the merits.** The court below pontificated, "And we explicitly hold that when a state court uses the language such as **'[t]he defendants remaining contentions are either unpreserved or without merit' the validity of the claim is preserved and is subject to federal review.**" The result of the "review" by the state's intermediate court quite clearly reads – "the appellant's remaining contentions are without merit."[8] But for record purposes, there were no issues canvassed by the petitioner, including the judgment of the court of first instance being a nullity, that was deliberated on by both the intermediate and state's highest court. The lower court totally masked the outcome of the statement of intent in the intermediate court's

[8] 3.10 ICCPR: The right to a reasoned judgment.

judgment – THE PETITIONER'S OTHER CONTENTIONS ARE WITHOUT MERIT.[9] What were these issues that were found to be without merit without an examination of the facts and the law? Both the states intermediate and highest courts failed to list them, and treat them judiciously and judicially.

Therefore, there are no issues listed below on pages 19 and 20 by the petitioner that were brought to the attention of the state's highest court that was dealt with by that court. This shows that one of the four parameters listed by the lower court in *Hoblock v. Albany Board of Elections*, 422 F.3d 77, 83 (2nd Cir. 2005), cannot be satisfied. Furthermore, there was no judgment on the merit on any issue pertaining to the constitutional due process violation, even though it arose from the grounds of two orders being entered on the same day. The petitioner then appealed against this ruling and took those contentions to the state's highest court. They ruled: "The order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution." This statement is best described as a veritable piece of worthless ambiguity.

From the above my "independent claim" that the order of filiation sent to me on November 8, 2001 is a forgery and does not meet statutory requirements[10] which states quite explicitly that the following wordings should be *conspicuously inserted* is actually missing. . . . Family

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[9] 5.1 ICCPR: The right to full review.

[10] The law is stated in *Halsbury's Laws*, 4th Edition, Vol. 44, para. 933 as follows:

> "Where a statute requires an act to be done at or within a particular time, or in a particular manner, the question arises whether validity of the act is affected by a failure to comply with what is prescribed. If it appears that Parliament intended disobedience to render the act invalid, the provision in question is described as mandatory, absolute, imperative or obligatory, if on the other hand, compliance was not intended to govern the validity of what is done, the provision is said to be directory."

Court Act 1113: "All such orders shall contain the following statement in conspicuous print, Pursuant to section 1113 of the family court act, an appeal must be taken within thirty days of receipt of this order." Compare App. 8 & 11. I submit to this honorable Court that New York State law confers a fundamental liberty right, which was denied me by the state court. Thus a *collateral attack* has been launched against their actions. There is no other remedy known in law, when a falsified document has been issued apart from the withdrawal of the said falsified document and the re-issuance of a corrected copy.[11]

The injury complained about is a denial of fair hearing through (a) the state family court procedure of entry of an order of filiation and an order of support on the same day. (b) issuance of an order of filiation that does not meet the mandatory statutory standard, and (c) the denial of access to state court to remedy the injury. This order of filiation was sent 16 months after. This was fully expatiated on during questioning by Judge Raggi in the argument session.[12]

The Supreme Court has held in *Brown v. Allen,* 344 U.S. 443 (1953), "To insist on state remedies would thus be ineffective and the plaintiff has presented the state with more than one opportunity based on the same issue, to remedy the situation."

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[11] The Nigerian judicial system is anchored on the aphorism "where there is a wrong, there must be a remedy." (Ubi Jus Ibi remedium).

[12] It is settled law that a judgment which is a nullity cannot create *estoppel per res judicata.*

D. The court below misapplied the principles of fair hearing, collateral *estoppel*, and inextricably intertwined. It also deviated from its previous holdings in *Hoblock v. Bd. of Elections*, *Jimenez v. Walker*.

The court below misled itself by confusing this case with the *Rooker* case, where the petitioner sought the federal court to declare the state's highest court judgment null and void. The difference here is that unlike in *Rooker*, the state's highest court did not give the petitioner a fair hearing, as no issues were deliberated upon, and there is no res judicata in judgments that are a nullity. Again, the petitioner took the advice of Judge Dearie (EDNY), and went back to the family court that committed the constitutional *faux pas,* and asked them to correct their mistakes. See embedded motion above, there has been no hearing granted.[13] **"The fact that the state court chose not to remedy the injury does not transform the subsequent federal suit on the same matter into an appeal, forbidden by *Rooker-Feldman*, of the state court judgment."**

Thus, no state court decision has been entered on the motion filed by the petitioner at state family court on April 24, 2005.[14] The petitioner is not claiming that the state court was wrong in its deliberations, but that constitutionally and statutorily guaranteed procedures were not followed. See issues raised in the motion above.

"Inextricably intertwined means at a minimum, that where a federal plaintiff had an opportunity to litigate a claim in a state proceeding . . . subsequent litigation of the claim will be barred," *Hoblock, supra*. In this case, no claim listed below (pages 19-20), was ever litigated in any state proceeding including the state's highest court. Is it possible for an "independent" and therefore non-barred

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[13] 3.2.1 ICCPR: The right of access to a court or tribunal.

[14] "These claims should have been raised in state court, either in the Family Court or on appeal." Judge Dearie, Eastern District of New York.

claim that may deny a legal conclusion reached by the state to be upheld by the federal court? *Exxon Mobil* answers in the affirmative, but the court below challenges that holding. The sources of these constitutional federal claims/injuries were procedural, administrative and criminal in nature as listed above not the actual judgment.[15]

Under federal law, collateral *estoppel* applies when the resolution of the issue was necessary to support a valid and **final judgment on the merits.**" *Interoceanica Corp. v. Sound Pilots, Inc.*, 107 F.3d 86, 91 (2nd Cir. 1997). If these principles are applied to the state's highest court's final judgment and the issues raised therein, it could be seen that even the attempt by the lower courts to push the attention of this Court to previous cases filed does not absolve the defendants, because those cases were wrongly decided by the lower federal courts and their judgment are a nullity, as no proof can be offered to show that all the issues raised were dealt with by the state's highest court.[16]

The court below attempted to reduce the import of the language in the state's intermediate court judgment showing an intent to review, from: "However the issues raised on appeal from both of those orders *are brought up*

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[15] The *Rooker-Feldman* Doctrine does not deprive an inferior federal court of jurisdiction if the federal plaintiff raises an "independent claim," even if that claim "denies a legal conclusion that a state court has reached in a case to which he was a party." *Hoblock v. Albany County Bd. of Elections*, Nos. 04-5876-cv, 04-5993-cv, 2005 U.S. App. LEXIS 19071, at *16-*17 (2d Cir. Sept. 2, 2005) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 125 S. Ct. 1517, 1527 (2005)).

[16] See 28 U.S.C. § 1738 (requiring federal court to give same preclusive effect to state-court judgment as another court of that state would give); *Exxon*, *supra* ("Disposition of the federal action, once the state-court adjudication is complete, would be governed by preclusion law."); see also *Hoblock*, *supra* ("*Exxon Mobil* teaches that *Rooker-Feldman* and preclusion are entirely separate doctrines.") Under New York law, collateral estoppel only applies "if (1) the issue in question was actually and necessarily decided in a prior proceeding."

for review. . . .", to: "Nevertheless, the issues underlying both orders *were reviewable on appeal. . . .*", and totally avoided mentioning the outcome of such a review in its attempt to obfuscate the law and perpetuate injustice; coupled with its speculative attempt to illustrate how these procedures are inextricably intertwined with the state intermediate court's judgment, is an academic exercise and thus moot. The ambiguous language of the state's highest court judgments, App. 6, would not satisfy the parameters set by the 6th, 7th, and 8th Circuits: A petitioner had a full and fair opportunity to litigate if (1) he has clearly informed the state court of the factual basis for that claim and has argued that those facts constitute a violation of his Fourteenth Amendment rights and (2) the state court has carefully and thoroughly analyzed the facts and (3) applied the proper constitutional case law to the facts. *Willett v. Lockhart*, 37 F.3d 1265 (6th Cir. 2000); *Pierson v. O'Leary*, 959 F.2d 1385, 1391 (7th Cir. 1992); *Machacek v. Hofbauer*, 213 F.3d 947 (8th Cir. 1994).

Though not conceding that any issue pertaining to the judgment of the court of first instance being a nullity was deliberated upon in any state court, it is important to re-emphasize that the issues referred to by the lower courts are totally different from the present issues raised, the state intermediate court only identified two grounds for an appeal and made a statement to review all the issues raised therein. It should have gone ahead to take the issue of nullity first. It did not. (This issue is not even listed as part of his judgment.) It did not state its reasons for arriving at its decisions that all the petitioner's contentions were without merit after reducing the money extorted from the petitioner. The petitioner was not in state appellate court to have the extorted money reduced but to complain that a fair hearing was not granted him in the family court. The state's highest court neither acknowledged any issue, nor bothered to mention the applicable law or the reason for its decision, thus violating the fair hearing rules and international law.

For record purposes the essential elements of my complaints and the issues brought before the state's highest court in 2003 were –

(i) That the state intermediate court failed to attend to the issue of the judgment of the court of first instance being a nullity, because of the withholding of court documents and issuance of a falsified one.

(ii) That state laws were wrongly applied in the state appellate court, because it was state officials that prevented the petitioner from complying with state laws.

(iii) That it is prejudicial for the state intermediate court to have started its judgment with the statement "the father appeals from. . . ." When one of the bases of the appeal is that due process was not followed.[17]

(iv) That in view of the above, the issue of a challenge to the family court's entry of an order of filiation and an order of support on the same day, thus denying the petitioner the right to appeal against the order of filiation,[18] contrary to how others in similar situation are treated, was a violation of international laws, 14th Amendment of the U.S. Constitution.

(v) That the withholding of a court document for 16 months, thereby denying petitioner a chance to appeal against the decision as stipulated by law, violated my 6th Amendment rights and international law.

(vi) That the appellate court's description of my allegations of falsification of court records, issuance of the same fraudulent records to a litigant with sole aim of misleading a superior court, as without merit, without asking for proofs, violated my rights to a fair hearing.

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[17] 3.1 ICCPR: The right to be tried by a competent, independent and impartial tribunal established by law.

[18] This appeal (objection) is only obtainable in the same family court that entered the order and not in the Appellate Department. Hence, the dismissal by the state appellate court that "the order is not appealable as of right and leave to appeal has not been granted."

(vii) That the above actions rendered the judgment of the family and appellate courts null and void.

The state's highest court stated that "the appeal cannot be resolved within the meaning of the Constitution." That statement is ambiguous-and not decisive and does not meet international standards because it denied the petitioner the opportunity to effectively appeal against the decision since no issue was listed and the basis of an appeal is smothered. The issues so smothered are preserved and could be reviewed by a federal court especially when it violated the petitioner's civil rights. The other alternative was for the petitioner to return to the court of first instance to have the nullity set aside, which he did, and he was refused a hearing. Therefore, there is no court in the United States where the above issues were ever addressed.

E. The court below wrongly relied on speculation and deceptive summarization of a "statement of intent" in a prejudicial state intermediate court judgment, when there is an existing final judgment of the state's highest court.

Assuming but not conceding that the court below can ignore the judgment of the state's highest court, it must be emphasized that the State of New York runs its courts on the basis of strict hierarchy. The family court, the state appellate court, and the state court of appeal, in ascending order.

The court below in *Hoblock, supra*, allowed one issue to survive based on what was actually and necessarily decided in the state's highest court, and stated –

> "But to determine what issues were 'actually and necessarily decided' by the New York Court of Appeals – and it is the preclusive effect of that decision alone that is in question – we look at the majority opinion. Whereas here, that opinion *unambiguously* relies on state law alone, we cannot

> say that the court decided federal constitutional questions . . . judges in the Appellate Division would have preferred that the case be decided differently on constitutional ground . . . and issue preclusion thus does not bar the voters from litigating this issue in federal court."

Hoblock, supra. The above depicts the import and the weight the court below grants to the judgment of the state's highest court. This was not applied in this case. Can a federal court rely on the judgment of a state intermediate court when there is a judgment of the state's final court in existence?

F. Once a judgment is a nullity, subsequent provision of a full and fair opportunity to litigate in appellate court, does not validate such a judgment.

"For the rule of fair hearing is not a technical doctrine. It is one of substance."[19] The question is not whether injustice has been done because of lack of hearing. It is whether a party entitled to be heard before had in fact been given an opportunity of hearing in the state family court, thus the intermediate cannot do any other thing but vacate the judgment of the court of first instance. Once an Appellate Court comes to the conclusion that the party was entitled to be heard before a decision was reached but was not given the opportunity of a hearing the order/judgment thus entered is bound to be set aside.[20] For it

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[19] "Fair hearing does not in my view lie on the correctness of the decision handed down by the Court. It lies entirely in the procedure followed in the determination of the case. Hence the true test of fair hearing is. . . . the impression of a reasonable person who was present at the trial whether, from his observation, justice has been done in the case . . . " Kayode Eso, Rtd. Justice of the Nigerian Supreme Court. In *State v. Owonto* (1983) SCN CR 142, 160.

[20] The Nigerian Constitution (1999) IV, Fundamental Rights. Chapter 33: Section 36 of the 1999 Constitution expressly provides that a person has a right to fair hearing before any tribunal in the determination

(Continued on following page)

to continue with its ruling, even if a full and fair opportunity is granted the petitioner was an exercise in futility.

The court below went on a journey of discovery and avoided the kernel of the case. The issue is primarily whether a state appellate court can go ahead to grant a full and fair opportunity to litigate issues when it has not dealt with the complaint that the judgment of the court of first instance is a nullity. It is trite law that such a challenge is first dispensed with before any court can go ahead to treat other matters. It does not really matter what fair and full opportunity is granted, once an order or an action in an inferior court violates the constitution and it is a nullity, subsequent trial and judgment without the resolution of such a challenge is a waste of time.

There cannot even be the semblance of a full and fair hearing unless the state highest court actually reached and decided the issues of fact tendered by the petitioner. The claim (demurrer) during state appellate proceedings should have been attended to first before any other issue is dealt with. A second opportunity was given them in April 2005, and access to state court was denied.

I submit that the first order of business of any appellate court that dealt with this case was to pronounce on whether the action of the family court had not nullified their judgment. Then and there either dismiss my appeal as incompetent or send it back to the court of first instance for the reissuance of the order of filiation.

The court below is trying to hide under form not substance. The fact that one's case is heard in a court is not synonymous with the granting of a fair trial or hearing. If no express finding of fact as to the judgment of the state family court being null and void, had taken place in state appellate courts, a federal court must initially determine whether the

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of any of his rights, obligations or interest before a competent court of law and within a reasonable period of time. The essence of this provision is to ensure that justice is not only expressly guaranteed but must be seen to be manifestly made available in all ramifications to all persons in the determination of their rights and obligations.

state court has impliedly found material facts to that issue. No relevant findings had been made unless the state court decided the constitutional claim tendered by the defendant on the merits.

After all is said and done, the judgments of all the courts of the United States entered after August 15, 2000 are a nullity unless and until a corrected copy of the order of filiation is received by the petitioner, and a new process is begun from then onwards.

G. There is nothing to show that a full and fair opportunity to litigate all the issues was ever granted the petitioner and there is no proof that the issue of the mandatory 30-35 days hiatus was deliberated on.

The entry of an order of filiation and an order of support on the same day violates the procedural due process requirements, because it denied a 30-35 day hiatus for an objection to be filed against the entry of the order of filiation.

> "This 30-day time limit is 'mandatory and jurisdictional.' The purpose of the rule is clear: it is to set a definite point of time when litigation should be at an end, unless within that time the prescribed application has been made; and if it has not been, to advise prospective appellees that they are freed of the appellant's demands. Any other construction of the statute would defeat its purpose."

Matton Steamboat Co. v. Murphy, 319 U.S. 412, 415 (1943). This constitutes one of the pillars of my procedural due process claim. There is a presumption in law, that the legislature does nothing in vain. See *Halsbury's Laws of England,* 4th Edition, Vol. 44, para. 861. I challenge the United States judiciary to show proof that this did not occur and that this issue of two orders entered on the same day was ever deliberated on.

Other issues apart from the judgment being a nullity were presented to the court below but it chose to focus only on one, thus also denying the petitioner fair hearing. The court below is loudly silent on the issue of the state court denying the petitioner access to her courts which itself is against international law. It is silent on the entry of an order of filiation and support on the same day. The build up to the *ratio decidendi* of the lower court betrays the flaw in its logic and the conjectural nature of its holding: "To this extent," "it appears" . . . "though we did not look into that," these words are elements of speculation which the Supreme Court has warned against quite forcibly in ***Townsend v. Sain*, 372 U.S. 293 (1963)**:

> "Unless the district judge can be reasonably certain that the state trier would have granted relief if he had believed petitioner's allegations, he cannot be sure that the state trier in denying relief disbelieved these allegations. If any combination of the facts alleged would prove a violation of constitutional rights and the issue of law on those facts presents a difficult or novel problem for decision, any hypothesis as to the relevant factual determinations of the state trier involves the purest speculation. The federal court cannot exclude the possibility that the trial judge believed facts which showed a deprivation of constitutional rights and yet (erroneously) concluded that relief should be denied. Under these circumstances it is impossible for the federal court to reconstruct the facts, and a hearing must be held."

For record purposes and since this case is winding down to a Nigerian court, the petitioner would explain what took place within the United States judiciary for better understanding of the due process violation that occurred in the court of first instance. The key to unraveling this case, thus lie in the words **STATE PROCEEDINGS**, which the court below wrongly summarized. State proceedings ended at the state's highest court. Even if, the

intermediate court provided fair hearing, if the final court did not, then a full and fair opportunity to litigate has not been granted. The petitioner approached the state's highest court with the pleadings that the intermediate court was wrong to apply state case and procedural laws to my situation, because, the reason why I did not fulfill state law requirements was **extrinsic**[21] to me, and caused by state officials, and, fair hearing was not accorded me in the family and intermediate courts as judgment was not on the merit.

My submission to the state's highest court was that the family court operates on a two tier arbiter system, manned by a hearing examiner, who is also a magistrate, and a presiding judge, who is in charge of the overall proceedings. During proceedings, when an initial order is first entered by a magistrate, a litigant on receipt of a copy of the order, then has the right to appeal within 30-35 days of receipt of the said order, the controlling law is the Family Court Act 1113.[22] It states, "All such orders *shall* contain the following statement in conspicuous print. Pursuant to section 1113 of the family court act, an appeal must be taken within thirty days of receipt of this order." (This means, that when I complain of a denial of the right to appeal, *that appeal should have been taken as of right, within the family court.*) Could any superior court have granted the petitioner fair hearing without resolving this issue? The answer is no, as the only solution lay in re-manding the case back to the family court for a re-issuance of a corrected copy of an order of filiation as explicitly stated by the controlling statute.

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[21] *Murray v. Carrier*, 477 U.S. 478, 485 (1986).

[22] If this order was entered by a judge, the order may be appealed pursuant to section 1113 of the Family Court Act (FCA). That section provides that an appeal from that order must be taken within 30 days after the receipt of this order by the appellant in court, 30 days after service by a party or the law guardian upon the appellant, or 35 days from the date of mailing of the order to the appellant by the Clerk of the Court, which ever is earliest.

On August 15, 2000, Judge Weinstein, entered an order of filiation. That order, following from above, would have been *appealable as of right* to the same Judge Weinstein, **if**, a copy of the order containing the mandatory judicial notice was sent to me promptly. It was sent to me 16 months after, WITHOUT THE JUDICIAL NOTICE,[23] thus rendering it a nullity. (Compare App. 8 & 11). Therefore the state intermediate court cannot turn around and use state laws as a basis for dismissing my claim, as my *failure to meet the state procedural law requirement, was due to the malicious machinations of state court officials.*[24] Does this mean that the judicial decision was wrong? No, the complaint is thus against the administrative function that did not take place after the judicial decision.

On the same August 15, 2000, to confirm the deliberate act of state court officials, Judge Weinstein, ordered us back to the court of Magistrate Clarke, who entered an order of support, contrary to New York law, which demands that a 30-35 day gap expires, before the entry of the second order.

The issue of entry of both orders on the same day, a procedural due process claim is not mentioned by the intermediate state court judgment proving that this issue was never deliberated on. In *R v. Bishop of Oxford* (1879) Q.B.D. 245, Lord Cairns was of the opinion that –

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[23] 5.2 ICCPR: The availability of a judgment.

[24] The question whether non-compliance with procedural or formal requirements renders nugatory the purported exercise of a statutory power has been in issue in a very large number of reported cases, from which but few principles can be elicited. The normal consequence of non-compliance with the requirements is invalidity. The law is stated in *Halsbury's Laws*, 4th Edition, Vol. 44, para. 933 as follows:

> "Where a statute requires an act to be done at or within a particular time, or in a particular manner, the question arises whether the validity of the act is affected by a failure to comply with what is prescribed. If it appears that Parliament intended disobedience to render the act invalid, the provision in question is described as mandatory, absolute, imperative or obligatory."

> "where power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the court will require it to be exercised."

What was the legislative intent behind the explicit law that the judicial notice shall be inserted in "*conspicuous print*?" And, what is the penalty for its absence?

On FCA 439(e), this law basically means that one can only appeal against a final order of the hearing examiner or the presiding judge. The order of filiation was entered on August 15, 2000. It was NOT the final order. If due process was accorded me, a copy of the said order should have been issued to me by the family court well before the entry of any order of support. It was impossible to appeal against this order because the state family court deliberately held on to a copy of the order and only released a falsified copy, which did not contain the mandatory notice spelling out my rights to an appeal within the family court system, 16 months after, on the eve of the appellate court hearing. Also, for example, the order of support entered on August 15, 2000 was a Temporary order of support. This order though enforceable, could not be appealed against because it was temporary. The Supreme Court has also reiterated in this vein on the import of the state's highest court judgment, where she held that "a procedural default does not bar consideration of a federal claim on either direct or habeas review unless the *last state court* rendering a judgment in the case 'clearly and expressly' rests on a state procedural bar." *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985).

The petitioner further submitted that it was the interference by state judicial officers that made compliance to state laws impossible and thus it would be against the grain of natural justice and a miscarriage of justice for

them to be punished for non-adherence to procedural needs.[25]

H. The United States judiciary cannot build something on nothing and expect it to stand.

The court below engaged in deceptive summarization of the statement in the state's intermediate court to arrive at a wrong conclusion, by creating the impression that a procedural bar was raised, based on state law, to the litigation of issues. It is trite that if relief has been denied in prior state collateral proceedings after a hearing but without opinion, it is often likely that the decision is based upon a procedural issue – thus the claim is not inextricably intertwined. This case is still inchoate in the state court.

> "If an act is void, then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without much ado, though it is sometimes convenient to have the Court declare it to be so. **And every proceeding, which is founded on it, is also bad and incurably bad.** You cannot put something on nothing and expect it to stay there. It will collapse. The normal consequence of non-compliance with the requirements is invalidity."

Lord Denning in McFoy, *supra*.

Thus there has been a miscarriage of justice and I have been treated unfairly because I am black and a foreigner in the United States. The injury complained about arose from the non-judicial actions of state court officials and they were

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[25] "The defect is extrinsic to the adjudication. The service of process on the defendant so as to enable him appear to defend the relief being sought against him and appearance by the party or any Counsel must be those fundamental conditions precedent required before the Court can have competence and jurisdiction. This very well accords with the principles of natural justice." *Murray, supra*.

clearly – administrative and ministerial functions. The question this honorable Court should answer is what happens when a state court refuses to set aside a judgment which is a nullity, and previously refused to attend to issues raised in prior proceedings; and the cause of that nullity also violates international and Constitutional due process guarantees to a foreigner, whose responsibility is it to correct the injustice if not a federal court with inherent powers. The Supreme Court left open the possibility in *Exxon Mobil* that "a case might arise that would directly challenge a state court judgment in a way that the Supreme Court clearly envisioned would be barred by *Rooker-Feldman*, and yet for some reason not be precluded." This is such a case.

CONCLUSION

The United States judiciary is laboring under the belief that since this is a child support issue, then, the end justifies the means. Unfortunately, under international law, the right to due process is absolute. It is against the right of natural justice for the United States judiciary to protect an unlawful act like the falsification of court records and the withholding of a court order for 16 months, because the perpetrators are judicial officers. It is trite that one must not be deterred from enunciating the correct principle of law because it may have startling or even calamitous results.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

EDMUND OROK EDEM
97 Broad Street
Staten Island, New York 10304
718 815 2725

2006 WL 3228792

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of November, two thousand six.

PRESENT: HONORABLE RICHARD J. CARDAMONE,
HONORABLE JOHN M. WALKER, JR.,
HONORABLE REENA RAGGI,
Circuit Judges.

EDMUND OROK EDEM,
Plaintiff-Appellant,

v.

ELIOT L. SPITZER, STEWART WEINSTEIN, ELIZABETH SHAMAS, MARK CLARK, PAULA HEPNER, MITCHELL REGENBOGEN, ALBERTO GONZALES, MICHAEL BELOHLAVEK, NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, MICHAEL A. CARDOZO, JOHN & JANE DOES,
Defendant-Appellees.

No. 05-4499-cv

(Filed Nov. 7, 2006)

APPEARING FOR PLAINTIFF:	EDMUND OROK EDEM, *pro se*, Staten Island, New York.
APPEARING FOR DEFENDANT:	GREGORY SILBERT, Assistant Solicitor General, (Robert H. Easton, *on the brief*) *for* Eliot Spitzer, Attorney General of the State of New York.
SUBMITTING FOR DEFENDANTS:	ALAN BECKHOFF, Assistant Corporation Counsel, *for* Michael A. Cardozo, Corporation Counsel, City of New York.

Appeal from the United States District Court for the Eastern District of New York (Raymond J. Dearie, Judge).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the United States District Court for the Eastern District of New York dated August 15, 2005, and entered on the docket on August 16, 2005, is AFFIRMED.

Edmund Orok Edem, *pro se*, sues various government officials and entities for the alleged violation of his civil rights in the course of paternity proceedings in Kings County Family Court. *See* 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988. Specifically, Edem contends that defendants conspired to deprive him of procedural due process by denying him the right to appeal from an August 15, 2000 state court order of filiation and child support. The district court, which had previously dismissed for lack of subject matter jurisdiction two prior complaints by Edem raising virtually identical claims, *see Edem v. State of New York,* No. 03-cv-1220 (RJD) (LB) (E.D.N.Y. Nov. 2, 2004); *Edem v. Northfield Savings Bank,* No. 04-cv-657 (RJD) (LB) (E.D.N.Y. Nov. 2, 2004), *sua sponte* dismissed Edem's

most recent complaint as frivolous, holding, once again, that federal courts lack subject matter jurisdiction to hear Edem's claims pursuant to the doctrine articulated in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983). *See Edem v. Spitzer*, 05-cv-3504, 2005 WL 1971024 (E.D.N.Y. Aug. 15, 2005). On appeal, we review this ruling *de novo*. *See Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 83 (2d Cir. 2005) ("Because *Rooker-Feldman* goes to subject-matter jurisdiction, we review *de novo* the district court's application of the doctrine."). We assume the parties' familiarity with the facts and the record of prior proceedings, which we reference only as necessary to explain our decision.

The *Rooker-Feldman* doctrine establishes that federal courts lack subject matter jurisdiction in "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Edem's complaint satisfies all four factors identified in *Exxon Mobil* for the application of the *Rooker-Feldman* doctrine: (1) Edem lost the filiation claim in state court and, thus, was directed to provide financial support; (2) he complains of the injury caused by the state court order; (3) the state court determinations in question were rendered before this action was commenced; and (4) Edem seeks a declaration that the state court's judgment is unconstitutional and void. Accordingly, as the district court correctly concluded, federal courts lack subject matter jurisdiction to hear his claim.

In an effort to demonstrate that his claim is not barred by *Rooker-Feldman,* Edem submits that he does not challenge the state judgment, but rather the defendant's failure to afford him "adequate notice and an opportunity to be heard prior to the deprivation of his property rights," thereby depriving him of due process. Complaint at 5-6, § 13. We are not convinced. The procedural defects that plaintiff alleges are, in fact, inextricably intertwined with the substantive decisions of the state court. *See Hoblock v. Albany County Bd. of Elections,* 422 F.3d at 86-87 ("*Rooker-Feldman* bars a federal claim, whether or not raised in state court, that asserts injury based on a state judgment and seeks review and reversal of that judgment; such a claim is 'inextricably intertwined' with the state judgment.").

Under New York law, no appeal of right was available from the filiation or support order. *See Matter of Dep't of Soc. Serv. v. Jay W.,* 105 A.D.2d 19, 28, 482 N.Y.S.2d 810, 818 (2d Dep't 1984); Family Court Act § 439(e). Nevertheless, the issues underlying both orders were reviewable on appeal from the state court's final order dated May 30, 2001. *See Matter of Ise-Smith v. Orok-Edem,* 296 A.D.2d 414, 414-15, 745 N.Y.S.2d 461, 461 (2d Dep't 2002). To this extent, it appears that Edem was given a full and fair opportunity to litigate the challenged orders, which suggests that his due process claim is frivolous. We do not, however, reach that issue. Rather, we summarize the state proceedings only to illustrate that Edem's procedural due process claims are, in fact, inextricably intertwined with the state court's judgment, and thus, outside our subject matter jurisdiction. *See Phifer v. City of New York,* 289 F.3d 49, 57 (2d Cir. 2002) (holding that this court may not review family court determinations that were decided

after providing plaintiff a "full and fair opportunity to litigate those issues"). As we observed in *Hoblock v. Albany County Bd. of Elections,* simply "presenting in federal court a legal theory not raised in state court . . . cannot insulate a federal plaintiff's suit from *Rooker-Feldman* if the federal suit nonetheless complains of injury from a state court judgment and seeks to have that state-court judgment reversed." 422 F.3d at 86.

Because we lack jurisdiction, we do not address plaintiff's remaining arguments or his miscellaneous motions. Accordingly, we AFFIRM the judgment of the district court and DENY all pending motions as moot.

FOR THE COURT:
THOMAS ASREEN,
ACTING CLERK

/s/ Lucille Carr
By:

In the Matter of Pamela Ise-Smith, Respondent, v. Edmund Orok Edem, Appellant.

Mo. No. 949

COURT OF APPEALS OF NEW YORK

98 N.Y.2d 764; 781 N.E.2d 915; 752 N.Y.S.2d 3; 2002 N.Y. LEXIS 3103

October 15, 2002, Decided

NOTICE: DECISION WITHOUT PUBLISHED OPINION

SUBSEQUENT HISTORY: Reargument denied by *Ise-Smith v. Orok-Edem*, 99 N.Y.2d 608, 797 N.E.2d 1160, 2003 N.Y. LEXIS 233, 757 N.Y.S.2d 814 (2003)

PRIOR HISTORY: *Smith v. Orok-Edem*, 296 A.D.2d 414, 745 N.Y.S.2d 461, 2002 N.Y. App. Div. LEXIS 7072 (N.Y. App. Div. 2d Dep't, 2002)

OPINION: Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

[SEAL]

Family Court of the State of New York
County of Kings
283 ADAMS STREET
BROOKLYN, NEW YORK 11201

DATE: 4/25/2005

Edmund Orok Edem
97 Broad Street
Staten Island, NY 10304

BRING THIS NOTICE WITH YOU AND GIVE IT TO THE COURT OFFICER IN PART 23 ROOM 344

WARNING: YOUR FAILURE TO APPEAR MAY RESULT IN AN INQUEST OR A WARRANT FOR YOUR ARREST

FINAL NOTICE TO APPEAR

IN THE MATTER OF:

Edmund Orok Edem

PETITIONER

-VS-

Pamela Ise Smith

RESPONDENT

DOCKET NO: P2539/00 motion #04

YOU ARE HEREBY NOTIFIED TO APPEAR IN THIS COURT ON: JULY 25, 2005 AT 9:00 A.M., IN THE ABOVE CAPTIONED PROCEEDING.

CLERK OF COURT
BY: /s/ Robert Ratanski

AT A TERM OF THE FAMILY COURT OF THE STATE OF NEW YORK, HELD IN AND FOR THE COUNTY OF KINGS
AT 283 ADAMS STREET
BROOKLYN, NY 11201
ON AUGUST 15, 2000

PRESENT: HON. STEWART H. WEINSTEIN
JUDGE

IN THE MATTER OF A PROCEEDING FOR PATERNITY UNDER ARTICLE 5 OF THE FAMILY COURT ACT	
PAMELA ISE SMITH	DOCKET NUMBER
PETITIONER,	P-02539/00
AGAINST	ORDER OF FILIATION
EDMUND OROK EDEM	
RESPONDENT.	
SSN #	

A VERIFIED PETITION HAVING BEEN FILED IN THIS COURT ON APRIL 5, 2000 BY PAMELA ISE SMITH ALLEGING THAT EDMUND OROK EDEM IS THE FATHER OF A FEMALE CHILD NAMED ELIZABETH EFFIOM ISE BORN OUT OF WEDLOCK TO PAMELA ISE SMITH ON FEBRUARY 2, 2000; AND

EDMUND OROK EDEM HAVING APPEARED BEFORE THIS COURT TO ANSWER THE PETITION, HAVING BEEN ADVISED BY THE COURT OF THE RIGHT TO

COUNSEL, AND TO SHOW WHY A DECLARATION OF PATERNITY, ORDER OF SUPPORT AND OTHER RELIEF PRAYED FOR IN THE PETITION SHOULD NOT BE GRANTED; AND EDMUND OROK EDEM HAVING DENIED THE ALLEGATIONS OF THE PETITION; AND

THE ISSUES HAVING DULY COME ON TO BE HEARD BEFORE THIS COURT;

NOW, AFTER EXAMINATION AND INQUIRY INTO THE FACTS AND CIRCUMSTANCES OF THE CASE AND AFTER HEARING THE PROOFS AND TESTIMONY OFFERED IN RELATION THERETO; IT IS

ADJUDGED AND DECLARED THAT EDMUND OROK EDEM IS THE FATHER OF ELIZABETH EFFIOM ISE.

DATED:

ENTER:

/s/ SHW
STEWART H. WEINSTEIN
JUDGE

Form 5-7
(Paternity-Order of Filiation)
12/97

At a term of the Family Court of the State of New York, held in and for the County of , at New York on , 19 .

PRESENT:
Hon.
Judge/Hearing Examiner

. . . . . .

In The Matter of a Paternity Proceeding

(Commissioner of Social Services, Assignee, on behalf of , Assignor)

Docket No.

Petitioner,

ORDER OF FILIATION

S.S.# (Assignor)

-against-

Respondent.

S.S.#

. . . . . .

NOTICE: **IF THIS ORDER WAS ENTERED BY A JUDGE,** THE ORDER MAY BE APPEALED
[*] PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT. THAT SECTION PROVIDES THAT AN APPEAL FROM THAT ORDER MUST BE TAKEN WITHIN 30 DAYS AFTER RECEIPT OF THE ORDER BY APPELLANT IN COURT, 30 DAYS AFTER SERVICE BY A PARTY OR THE LAW GUARDIAN UPON THE APPELLANT, OR 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF THE COURT, WHICHEVER IS EARLIEST.

IF THIS ORDER WAS ENTERED BY A HEARING EXAMINER, SPECIFIC WRIT-
[*] TEN OBJECTIONS TO THIS ORDER MAY BE FILED WITH THIS COURT WITHIN 30 DAYS OF THE DATE THE ORDER WAS REEIVED IN COURT OR BY PERSONAL SERVICE, OR IF THE ORDER WAS RECEIVED BY MAIL, WITHIN 35 DAYS OF THE MAILING OF THE ORDER.

The above-named Petitioner having filed a petition, sworn to , 19 , alleging that is the father of a (male) (female) child named [insert child's name and social security number] , born out of wedlock to on [insert child's date of birth] , 19 , (and that said (mother) (father) and/or child is or is likely to become a public charge); and

Said Respondent having appeared (been brought) before this Court to show cause why a declaration of

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[* Missing on page App. 8.]

paternity, order of support and other relief requested in the petition should not be made and the said Respondent having denied (admitted) the allegations of the petition; and

The issues having duly come on to be heard before this Court.

NOW, after examination and inquiry into the facts and circumstances of the case and after hearing the proofs and testimony offered in relation thereto; it is

ADJUDGED AND DECLARED that [father's name] is the father of [child's name]

ENTER

_____
J.F.C./H.E.

Dated: , 19

Check applicable box:

[*] • Order mailed on [specify date(s) and to whom mailed]: _____

[*] • Order received in court on [specify date(s) and to whom given]: _____

[* Missing on page App. 9.]

AT A TERM OF THE FAMILY COURT OF THE STATE OF NEW YORK, HELD IN AND FOR THE COUNTY OF KINGS
AT 283 ADAMS STREET
BROOKLYN, NY 11201
ON AUGUST 15, 2000

P R E S E N T: MARY CLARKE
HEARING EXAMINER

IN THE MATTER OF A PROCEEDING FOR PATERNITY UNDER ARTICLE 5 OF THE FAMILY COURT ACT	DOCKET NUMBER
PAMELA ISE SMITH SSN # XXX-XX-XXXX PETITIONER,	P-02539/00
AGAINST	TEMPORARY ORDER OF SUPPORT
EDMUND OROK EDEM SSN # XXX-XX-XXXX RESPONDENT.	

EDMUND OROK EDEM'S EMPLOYMENT:

(1) STAPLETON ANIMAL HOSPITAL
BROAD ST.
STTEN ISLAND , NY 00000

* *

* NOTICE: YOUR WILLFUL FAILURE TO OBEY *
* THIS ORDER MAY RESULT IN INCAR- *
* CERATION FOR CRIMINAL NON- *
* SUPPORT OR CONTEMPT; SUSPENSION *
* OF YOUR DRIVER'S LICENSE, STATE *
* ISSUED PROFESSIONAL, TRADE, BUSI- *
* NESS AND OCCUPATIONAL LICENSES *
* AND RECREATIONAL AND SPORTING *
* LICENSES AND PERMITS; AND IMPOSI- *
* TION OF REAL OR PERSONAL PROP- *
* ERTY LIENS. *

* *

A VERIFIED PETITION HAVING BEEN FILED IN THIS COURT ON APRIL 5, 2000 BY PAMELA ISE SMITH ALLEGING THAT EDMUND OROK EDEM IS THE FATHER OF A FEMALE CHILD NAMED ELIZABETH EFFIOM ISE, BORN OUT OF WEDLOCK, TO PAMELA ISE SMITH ON FEBRUARY 2, 2000; AND

EDMUND OROK EDEM HAVING APPEARED BEFORE THIS COURT TO ANSWER THE PETITION, HAVING BEEN ADVISED BY THE COURT OF THE ALLEGATIONS OF THE PETITION AND OF THE RIGHT TO COUNSEL, AND TO SHOW WHY AN ORDER OF SUPPORT AND OTHER RELIEF PRAYED FOR IN THE PETITION SHOULD NOT BE GRANTED;

NOW, AFTER EXAMINATION AND INQUIRY INTO THE FACTS AND CIRCUMSTANCES OF THE CASE; IT IS

ORDERED TEMPORARY ORDER OF SUPPORT $409.21 MONTHLY PAYABLE THE FIRST OF EACH MONTH THRU THE SUPPORT COLLECTION UNIT TO PETITIONER STARTING 9/1/00.

CASE ADJOURNED TO 10/31/00, H.E 3 AT 2:30PM.

NOTIFY PARTIES AND SCU. (ELIZABETH EFFIOM ISE S.S. #XXX-XX-XXXX)

DATED: 8/15/00

ENTER:

/s/ Mary A. Clarke
MARY CLARKE
HEARING EXAMINER

Linda A. Rackis Esq.
30 Bay Street
Suite 600
Staten Island, New York 10301
(718) 447-3049

August 27, 2001

Mr. Robert Ratanski
Clerk of the Family Court, Kings County
283 Adams Street
Brooklyn, New York 11201

Re: Matter of Pamela Ise Smith vs. Edmond Orok-Edem
Docket No.: P2539/00

Dear Mr. Ratanski:

I hereby request that an Order of Filiation entered in the referenced proceeding on August 15, 2000 be re-created, and a true copy, with the official Court Seal, be provided to me as counsel for the Respondent Edmond Orok-Edem.

A representative of my office appeared at Court on June 29th to secure a copy of said Order and to file a Notice of Appeal. I was given to understand that no copy of said Order could be found in the Court file, although there was no question but that the Order had been made. I understood that since the Order could not be located, it would be re-created, but to date nothing has been received and we have heard nothing from the Court.

In addition, my client had ordered transcripts from A & E Transcription Services, the concern which had been identified to him as the authorized transcription service for the Court. He has paid the company a substantial amount of money, but has received no transcripts, no refund, no responses to telephone calls, no cooperation: I

understand that he attempted to visit the company last week and found that the address which appears on its letterhead – 2304 Nostrand Avenue, Brooklyn, New York 11210 – is false. I would appreciate your providing me with whatever information you may have regarding this company, and advising whether there is another company authorized by the Court to make transcriptions.

I would appreciate your early response: thank you for your cooperation and assistance.

Very truly yours,

/s/ Linda A. Rackis

cc: Edmond Orok-Edem